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entries all in the hand-writing of the defendant, as in the present case, and a mere pencilled totalling and striking of the balance. Wadsworth, J., was of the opinion that this did not indicate, in any way, that there was authentication of the balance or an express indication given by the writer that he accepted it as binding upon himself, and he held that the writing of the name at the head of the account could not be regarded as authentication of the balance finally struck approximately one year later and therefore Article 64 did not apply. Thus, even Article 64 of the Limitation Act cannot apply to the present case because, even if the writing of his name by the defendant at the head of the account is to be taken as his signature within the scope of that Article as having been appended to the acknowledgment of May 31, 1947, the fact being that such writing of the name of the defendant was 2½ years earlier to the date of the acknowledgment, it cannot be said that the date of the signing is the same as the date of the acknowledgment and with this conclusion Article 64 does not help the plaintiff, for from the date of his putting his name on the heading of the account by the defendant, the suit is time barred.

In consequence, the decision of the learned trial Judge that the suit of the plaintiff is time barred is affirmed and the appeal is dismissed, leaving the parties to bear their own costs in this appeal.

Falshaw, J.

FALSHAW, J.—I agree.

B.R.T.

APPELLATE CIVIL.

Before Tek Chand, J.

PREM NATH —*Appellant.*

versus

M/s. KAUDOOMAL-RIKHIRAM AND ANOTHER,—*Respondents.*

First Appeal from Order No. 47 of 1955.

1957

Nov., 1st

Displaced Persons (Debts Adjustment) Act (LXX of 1951)—Sections 13 and 36—Limitation for the recovery of

a debt under section 13—Displaced Persons (Institution of Suits) Act (XLVII of 1948)—Section 8—Requirements of—Indian Limitation Act (IX of 1908)—Article 89—Suit by principal against agent—Period of Limitation for—Code of Civil Procedure (Act V of 1908)—Section 20—Suit by principal against agent—Whether to be instituted at the place of business of the principal or agent.—Place of payment—"Money paid" and "money payable"—Difference between—Common Law rule that debtor should seek his creditor—Whether applicable in India.

Held, that an application under section 13 of the Displaced Persons (Debts Adjustment) Act, 1951, can be filed within one year from the commencement of the said Act provided that the claim was within limitation at the commencement thereof having regard to the provisions of section 8 of the Displaced Persons (Institution of Suits) Act, 1948, as amended by Act LXVIII of 1950.

Held, that in order to attract the provisions of Act XLVII of 1948 and Act LXVIII of 1950, the plaintiff has to satisfy the court that he was unable to institute the suit within the period prescribed by the Indian Limitation Act owing to causes connected with his being a displaced person.

Held, that the limitation for a suit by the principal against his agent is provided under Article 89 of the First Schedule to the Indian Limitation Act.. A principal, who brings a suit against his agent for moveable property received by the latter and not accounted for, may sue within three years from the date when the account is, during the continuance of the agency, demanded and refused, or where no such demand is made, when the agency terminates.

Held, that both under clauses (a) and (b) of section 20 of the Code of Civil Procedure, the residence of the defendants for purposes of determining cause of action is to be "at the commencement of the suit." A commission agent, from the very nature of his work, transacts business on behalf of his principal scattered all over the country. A suit for the recovery of a specific amount, or for accounts by a principal against his agent, should be filed at the place where the latter was. Cause of action against an agent, therefore, arises where he does his business.

Held, that there is a sharp distinction between the place where any money is in fact "paid" and where it becomes "payable". Place of payment is where actual satisfaction takes place. On the other hand, the word "payable" is synonymous with "due". "Payable" means that which should be paid or which is to be, or liable to be paid. "Payable", therefore, excludes notion of fullfilment which is indicated by the word "paid".

Held, that the common-law rule that the debtor must seek his creditor does not apply in India for the purposes of determining the forum where the suit is to be instituted.

Case-law discussed and relied on.

First Appeal from the order of Sh. A. N. Bhanot, Sub-Judge, 1st Class, Gurdaspur, dated the 13th December, 1954, dismissing the application with costs.

BHAGIRATH DAS, for Appellant.

SHAMAIR CHAND, for Respondents.

JUDGMENT

Tek Chand, J.

TEK CHAND, J.—The appellant Shri Prem Nath, sole proprietor of firm Prem Nath Pran Nath, submitted a claim under section 13 of the Displaced Persons (Debts Adjustment) Act, 1951, for the recovery of Rs. 43,891-2-9, principal and interest. The petitioner was doing business at Lahore and on the partition of the country came to India. It is not denied that he is a displaced person under the Displaced Persons (Debts Adjustment) Act, LXX of 1951. The respondents, who had their Head Office in Lahore and a Branch Office at Gurdaspur, were acting as commission agents for the petitioner for the purchase of grains like wheat and paddy etc., which used to be despatched to different places under the petitioner's instructions. The practice which prevailed, was that the petitioner used to advance sums of money to the

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respondents, and *hundis* used to be drawn by the respondents on account of the price of the grains. The petitioner has stated that a sum of Rs. 29,215-2-9 remained in deposit with the respondents as sale proceeds of rice and paddy on the petitioner's account. This money lay in trust with the respondents for the petitioner. The petitioner also claims, besides the above sum, Rs. 14,676 as interest at 6 per cent per annum.

The respondents stated that all the sale proceeds were remitted to the petitioner, either by bank draft or otherwise, in accordance with his directions. Nothing was due from the respondents to the petitioner. The liability to pay any interest was also denied. It was also contended by the respondents that the petitioner had no *locus standi* to sue alone as he was not the sole proprietor. It was also pleaded, that the application did not lie under Act LXX of 1951 and it was time-barred. The following issues were framed in this case :—

(1) Is Prem Nath the sole proprietor of firm Prem Nath-Pran Nath ?

(2) If issue No. 1 is not proved, what is its effect ?

(3) Is the amount in dispute a "debt" as defined in Act No. 70 of 1951 ?

(4) Does not this application lie against both the respondents ?

(5) Is the sum of Rs. 29,215-2-9 due to the applicant from the respondents ?

(6) Is the application time-barred ?

(7) Is the applicant entitled to interest ? If so, at what rate ?

(8) Relief and against whom ?

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The first two issues were decided in favour of the petitioner, and it was held, that Prem Nath was the sole proprietor of the firm Prem Nath-Pran Nath and he could sue alone. On issue No. 3 it was held that the amount in dispute was a 'debt', as defined in the Act. Issue No. 4 was also decided in favour of the petitioner, and it was held that the application was competent. Issue No. 5 was held not to have been proved and therefore it was decided against the petitioner. Under issue No. 6 the application was held to be time-barred. On issue No. 7, it was held that if issue No. 5 had been found in favour of the petitioner then he would have been entitled to interest at the rate of six per cent per annum. In view of the decision on issues Nos. 5 and 6 the application was dismissed, but the parties were left to bear their own costs.

Against the above order, Pran Nath has filed an appeal to this Court. The issue as to limitation may be disposed of first. There are three provisions of the Displaced Persons (Debts Adjustment) Act, LXX of 1951, which have a bearing. Under Section 53 every application made under the Act is deemed to be a suit for the purpose of the Indian Limitation Act. Section 13 provides a limitation of one year after the date of the enforcement of the Act within which a displaced creditor may make an application, claiming a debt from any other person who is not a displaced person. The Act came into force on the 10th of December, 1951, and therefore application under section 13 claiming a debt could be filed by the 9th of December, 1952, to the Tribunal which was done in this case.

Section 36 which extends the period of limitation runs as under :—

"Notwithstanding anything contained in the Indian Limitation Act, 1908 (IX of

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1908) or in any special or local law or in any agreement,—

(a) any suit or other legal proceeding, in respect whereof the period of limitation was extended by section 8 of the Displaced Persons (Institution of Suits) Act, 1948 (XLVII of 1948), and

(b) * * * *
* * * *

may be instituted at any time within one year from the commencement of this Act."

Under the Displaced Persons (Institution of Suits) Act, 1948 (No. 47 of 1948) the period of limitation was extended for the first time by section 8. This section reads —

"Notwithstanding anything contained in section 3 of the Indian Limitation Act, 1908 (IX of 1908), or any special or local law, any suit instituted in pursuance of section 4 of this Act may be admitted after the period of limitation prescribed therefor when the plaintiff satisfies the Court that he was unable to institute the suit within such period owing to causes connected with his being a displaced person."

Under the above provisions the plaintiff had to satisfy the Court that he was unable to institute the suit within such period, owing to causes connected with his being a displaced person. If he had instituted a suit within three years from the date of the commencement of the cause of action,

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he would still have to comply with the provisions of section 8, but he did not choose to bring any suit while section 8 was the law prior to its amendment.

Section 8 of the Displaced Persons (Institution of Suits) Act, 1948, (No. 47 of 1948), as amended by the Displaced Persons (Institution of Suits and Legal Proceedings) Amendment Act, 1950, (No. 68 of 1950), runs as under :—

"Notwithstanding anything contained in section 3 of the Indian Limitation Act, 1908 (IX of 1908), or in any special or local law, any suit or other legal proceeding by a displaced person,—

(a) where such suit or other legal proceeding is instituted in pursuance of section 4 and the period of limitation expires or has expired on or after the 14th day of August, 1947, or

(b) where such suit or other legal proceeding is instituted otherwise than in pursuance of section 4 in respect of a cause of action which arises or has arisen in a place now situate within the territories of Pakistan and the period of limitation expires after the commencement of the Displaced Persons (Institution of Suits and Legal Proceedings) Amendment Act, 1950,

may be instituted at any time before the date of expiry of this Act."

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Section 8(a) contains a reference to section 4 of Act No. 47 of 1948, and for facility of reference this is also reproduced below :—

"Notwithstanding anything contained in section 20 of the Code of Civil Procedure, 1908 (V of 1908), or in any other law relating to the local limits of the jurisdiction of Courts or in any agreement to the contrary, a displaced person may institute a suit in a Court within the local limits of whose jurisdiction he or the defendant or any of the defendants, where there are more than one, at the time of the commencement of the suit, actually and voluntarily resides, or carries on business, or personally works for gain, if—

(i) the defendant, or where there are more than one, each of the defendants, actually and voluntarily resides or carries on business, or personally works for gain in India and is not a displaced person ;

(ii) the cause of action, wholly or in part, arises or has arisen in a place now situate within the territories of Pakistan ;

(iii) the Court in which the suit is instituted is otherwise competent to try it ; and

(iv) the suit does not relate to immovable property."

The contention of the learned counsel for the respondents is, that condition (ii) of section 4 has

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not been satisfied in this case. Mr. Shamair Chand, learned counsel for the respondents, has argued firstly, that the petitioner did not plead in this case, that cause of action arose in a place now situate within the territories of Pakistan. He, therefore, says that there was no allegation and in the absence of such an averment the petitioner should not be permitted at this stage to show that cause of action did arise in Pakistan. The second argument of Mr. Shamair Chand is that even if it be deemed to have been so alleged, there is no evidence, that the cause of action wholly or in part had arisen in a place within the territories of Pakistan.

With the first contention of the learned counsel for the respondents, that there was no allegation in the plaintiff's plea, that the cause of action arose in a place now situate within the territories of Pakistan, I do not agree. In para, 8 of the appellant's claim under section 13 of the Displaced Persons (Debts Adjustment) Act, 1951, it was stated that the petitioner was displaced person, while the respondents resided at Gurdaspur. He then averred that the claim was within time under the provisions of the Displaced Persons' litigation legislation, and under the provisions of Act No. 70 of 1951, and in the corresponding paragraph of the written-statement, this plea was traversed. The plaintiff in his replication reiterated, what was previously stated in the plaint and affirmed that the claim was within time. In view of the above, I cannot accept the contention of the learned counsel for the respondents, that the plea had not been taken. The maxim *secundum allegata et probata* does not apply to the facts of this case and the authorities referred to by the learned counsel in support of this maxim have no bearing, in view of what was alleged by the petitioner in para 8 of his claim.

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In the alternative, Mr. Shamair Chand has urged that, on the record of this case, there is no evidence that cause of action arose to the appellant in West Punjab, now forming part of Pakistan.

A. W. 5 Prem Nath appellant has nowhere stated that the money was payable to him from the respondents at Lahore, or that the contract was entered into between the parties there. Under section 20 of the Code of Civil Procedure, suits, other than those mentioned in the preceding sections, are to be instituted in a Court within the local limits of whose jurisdiction the defendant or each of the defendants, where there are more than one, at the time of the commencement of the suit, actually and voluntarily resides, or carries on business, etc. Both under clauses (a) and (b) of section 20 the residence of the defendants for purposes of determining cause of action is to be "at the time of the commencement of the suit". In this case the petition was made on 9th of December, 1952, when admittedly the defendants were residing in Gurdaspur. From the statement of Rikhi Ram, R. W. 2, the proprietor of the respondent-concern, Shri Bhagirath Das has tried to argue, that the Head office of the respondent-concern was in Lahore and only a branch in Gurdaspur. A careful perusal of his statement does not really support the contention of the learned counsel for the appellant. No doubt he did state in his cross-examination that the Head office of the respondent-concern was at Lahore and there was a branch at Gurdaspur. He then stated that the business in Lahore was transacted in the name of Basanta Mal Ram Lal, and this business was closed in Sambat 2000 (1943 A.D.). From the above statement, it cannot be concluded in the language of section 20 that the defendants, at the time of the commencement of the suit, carried on business at Lahore. Mr. Bhagirath Das then

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urges that the payment by the petitioner was by means of *hundis* drawn by the respondents and the *hundis* show that actual payment was made at Lahore by the petitioner. Mr. Shamair Chand, on the other hand, lays emphasis on the word "payable". He contends that cause of action arises at a place not where the money is actually paid but where it is payable.

The word "payable" occurred in Explanation III to section 17 of the Code of 1881, which related to causes of action in cases of contracts. Explanation III ran as under :—

"In suits arising out of contract, the cause of action arises within the meaning of this section at any of the following places, namely:—

(1) the place where the contract was made ;

(2) the place where the contract was to be performed or performance thereof completed ;

(3) the place where in performance of the contract any money to which the suit relates was expressly or impliedly *payable*."

After the insertion of the words "wholly or in part" in section 20(c), the retention of Explanation III has become superfluous and, therefore, this Explanation has been omitted, as no longer necessary, but it is nevertheless a correct statement of what is still the law, vide *Sita Ram* v. *Ram Chandra* (1). There is a sharp distinction between the place where any money is in fact "paid"

(1) 26 P.R. 1918

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and where it becomes "payable". Place of payment is where actual satisfaction takes place. On the other hand, the word "payable" is synonymous with "due". "Payable" means that which should be paid or which is to be, or liable to be paid. "Payable", therefore, excludes notion of fulfilment which is indicated by the word "paid". If, therefore, payment is in fact made at Lahore, it cannot follow that the amount was due to be paid there. In my opinion, the actual payment at Lahore, where the *hundis* were honoured, will not help in determining the place of accrual of the cause of action.

A commission agent, from the very nature of his work, transacts business on behalf of his principals scattered all over the country. A suit for the recovery of a specific amount, or for accounts by a principal, against his agent, should be filed at the place where the latter was. Cause of action against an agent, therefore, arises where he does his business. In this case the place of business of the respondent was Gurdaspur, and not Lahore, or any other place now forming part of Pakistan. If the petitioner had instituted a suit at Lahore after the accrual of cause of action, his suit there could not be proceeded with, as the Court at the principal's place of residence would have no jurisdiction to entertain the suit. This principle is well established and there is a long chain of authorities in its support : *vide Muhammad Shafi* v. *Karamat Ali* (1) ; *Asa Ram-Kalu Ram* v. *Bakhshi Ram-Kanahyia Ram* (2) ; *Prithi Singh-Jamayat Rai* v. *Harsukh Das-Jhog Mal* (3) ; *Bhambo Mal* v. *Ram Narain* (4) ; *Firm*

(1) 76 P.R. 1896
(2) I.L.R. 1 Lah. 203
(3) A.I.R. 1924 Lah. 593
(4) I.L.R. 9 Lah. 455

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Ramditta Mal Sant Lal v. *Firm Seth Jot Ram Kidar Nath* (1); *and Firm Jagan Nath Kuthiala Arhti* v. *Firm Khushi Ram Behari Lal* (2).

I am, therefore, of the view, that it has not been shown that Lahore was the place where the contract was made; or the place where the contract was to be performed; or the place where in performance of the contract, any money to which the suit related, was expressly or impliedly payable in accordance with the terms of Explanation III to section 17 of the Code of 1882, which though omitted as no longer necessary, is still the law.

Mr. Bhagirath Das has drawn my attention to a decision of a Single Judge in *Parma Nand Ganesh Parshad* v. *Firm Jawahar Singh Tara Singh* (3), which followed a Full Bench decision of the Madras High Court reported in *Venkatachalam* v. *Rajaballi* (4). In both these decisions it was found that the Court at the place where money for goods purchased was to be paid, had jurisdiction to entertain the suit for the recovery of the amount. In the absence of proof that payment in this case was to be made at Lahore, it cannot be said that cause of action had accrued in that Court.

In R. J. Wyllie and Co. v. *Secretary of State* (5), Hilton, J., held that as there was a clear admission that actual payments were made at Palampur, therefore the place of actual payment furnished the best evidence of the parties. From the above dictum it is not possible to deduce a principle which may govern the facts of this case. In that case the plaintiff-company had instituted

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(1) A.I.R. 1940 Lah. 171
(2) A.I.R. 1951 Punjab 378
(3) A.I.R. 1952 Punjab 381
(4) A.I.R. 1935 Mad. 663 (F.B.)
(5) A.I.R. 1950 Lah. 816

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a suit against the Secretary of State for India for recovery of a sum of money. It does not appear to be a case between principal and agent.

It was also argued that the petitioner, who was the creditor, lived at Lahore, and, therefore, according to the common-law rule of England the respondent as debtor must seek his creditor. This argument is without merit. The common-law rule does not apply for the purposes of determining the forum where the suit is to be instituted. See *Soniram Jeetmull* v. *R. D. Tata and Co. Ltd.* (1), *Piyara Singh* v. *Bhagwan Das* (2), *Jawala Dass Ram Narain* v. *Nand Lal* (3), and *Niranjan Singh* v. *Jagjit Singh* (4).

The limitation for purposes of instituting the suit in this case is provided under Article 89 of the First Schedule to the Indian Limitation Act. A principal, who brings a suit against his agent for movable property received by the latter and not accounted for, may sue within three years from the date when the account is, during the continuance of the agency, demanded and refused, or, where no such demand is made, when the agency terminates. In this case the last transaction was made on 20th of February, 1946, and the suit should have been instituted within three years from that date plus the further period extending the limitation as already indicated. The conditions, subject to which the appellant could institute the suit so as to make it within limitation, have not been complied with in this case.

Agreeing with the findings of the Tribunal on issue No. 6, I hold that the application of the

(1) A.I.R. 1927 P.C. 156
(2) A.I.R. 1951 Punjtb 33
(3) A.I.R. 1951 Punjab 128
(4) A.I.R. 1955 Punjab 128

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appellant under section 13 of the Displaced Persons (Debts Adjustment) Act, 1951, is time-barred.

The parties' case on merits, which is the subject-matter of issue No. 5, may now be examined. The appellant stated in his petition of claim, that the respondents were acting as commission agents for purchase of wheat, paddy, rice etc., and used to despatch the grains to different places under the instructions of the petitioner. Monies for the purchase of foodgrains used to be paid to the respondents by the petitioner, either in advance, or on the basis of *hundis,* drawn by the respondents for this purpose. It is stated, that a sum of Rs. 29,215-2-9, remained in deposit with the respondents as sale-proceeds of rice, paddy, wheat, etc., which had been previously purchased in the petitioner's account and which, without having been despatched under petitioner's instructions were sold by the respondents at Gurdaspur on their own behalf. This amount lay in trust with the respondents for the benefit of the petitioner. A sum of Rs. 14,676 is claimed as interest at six per cent per annum in accordance with the commercial usage. The total amount which the petitioner claims to be due to him is Rs. 43,891-2-9.

In reply the position taken up by the respondents is, that they were acting as commission agents for the petitioner's firm, Prem Nath Pran Nath, and the sale-proceeds, after defraying the necessary expenses, used to be remitted by *hundis* or drafts, as directed by the petitioner. It is stated, that the sale-proceeds of all goods purchased and re-sold as commission agents by the respondents for the petitioner, had been duly remitted as directed. The respondents' case, in brief, is that a sum of Rs. 30,000 was due from them to firm Prem Nath Pran Nath, but in accordance with the petitioner's instructions this amount of Rs. 30,000 was

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paid to Messrs. R. B. Lachhman Das Mohan Lal and Sons, and, therefore, nothing remained due from the respondents to the petitioner. It was stated on behalf of the respondents, that a sum of Rs. 7,000 was sent by a draft dated the 6th of March, 1946, and another sum of Rs. 20,000 was sent by draft dated the 8th of July, 1946, and the last payment of Rs. 3,000 was made, in cash, on the 28th of October, 1946, to Messrs. R. B. Lachhman Das Mohan Lal and Sons. The respondents contend, that the three sums totalling Rs. 30,000 were sent to the firm R. B. Lachhman Das Mohan Lal and Sons, because the petitioner, being indebted to that firm, wanted the respondents to make the payment directly. It is in evidence, that on the 6th of March, 1946, the date on which Rs. 7,000 was remitted to Messrs. R. B. Lachhman Das Mohan Lal and Sons, the respondents, previously on the same date, had taken two drafts of Rs. 5,000 and Rs. 2,000 each, in favour of the petitioner's firm Prem Nath Pran Nath, but got them cancelled and had a fresh draft prepared in favour of Messrs. R. B. Lachhman Das Mohan Lal and Sons. This was done in consequence of the telephonic instructions received from Lahore from the petitioner Prem Nath.

Mohan Lal, proprietor of Messrs. R. B. Lachhman Das Mohan Lal and Sons, was examined on interrogatories and he has corroborated the version of the respondents. He produced copies of his account-books and admitted that he received in all Rs. 30,000 from the respondents in the account of Messrs. Prem Nath Pran Nath. Mr. Bhagirath Das assailed the testimony of this witness on the ground that he was a relation of Rikhi Ram, proprietor of the respondent-firm, and was, therefore, favouring him. On the other hand, it is admitted that Mohan Lal is a close business associate of the petitioner in no less than three

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separate businesses, run by them in partnership. The petitioner Prem Nath also stayed with Mohan Lal at Lucknow when the latter's statement was recorded on commission there. The liability of the respondents to the petitioner in the sum of Rs. 30,000 is not denied. But what is alleged is that this sum was paid to firm R. B. Lachhman Das Mohan Lal and Sons at the bidding of the petitioner. The receipt of this Rs. 30,000 on the petitioner's account by Mohan Lal from the respondents has been admitted. The only question in controversy, therefore, is, whether the payment to Mohan Lal on petitioner's account had been an authorised remittance.

Apart from the oral testimony of Rikhi Ram and Mohan Lal, there is no document on the record proceeding from the petitioner, instructing the respondents to pay the amount of Rs. 30,000 due to him to firm R. B. Lachhman Das Mohan Lal and Sons, either just before or at any time after the payment. It is also urged, that the story as to the telephonic instructions regarding payment of Rs. 30,000 from the petitioner is false and an after-thought which was not mentioned in the written statement. The omission on the part of the respondents to produce the account-books was also adversely commented on by the learned counsel for the petitioner. The explanation of the respondents was, that the books had been given to Shri Kala Ram, the respondents' legal adviser, for being shown to the Income-tax Officer at Lahore, which remained there and could not be brought back to Gurdaspur owing to out-break of communal disturbances during 1947. Mr. Bhagirath Das argued, that this was an untrue explanation because those books would not be required for being shown to the Income-tax Officer who had to assess income-tax on the income

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of previous accounting years. Shri Kala Ram, who was a Chartered Accountant at Lahore before partition, stated as a witness that the respondents' books were with him at Lahore and he went after the partition, to Lahore, but he was not permitted to enter the premises of his office where he had left the books. From his testimony it cannot be inferred that he did not tell a true story. Mohan Lal has produced his account-books which show the receipt of Rs. 30,000 on petitioner's account from the respondents. The petitioner's books, on the other hand, do not evidence payment to firm R. B. Lachhman Das Mohan Lal and Sons of Rs. 30,000. I am inclined to accept the version of the respondents. It is admittedly a case of both sides, that this large amount was due to the petitioner from the respondents from the 20th of February, 1946, the date of the last transaction between them. It is not denied by the petitioner, that not a single demand for the return of this money was ever made by him from the respondents till the presentation of the petition under section 13 of Act No. 70 of 1951 on the 9th of December, 1952. No explanation of any kind has been given by the petitioner as to why he never demanded from the respondents the return of Rs. 30,000 or the interest on that large amount. Even if it be assumed that the petitioner was in affluent circumstances, that would not explain his conduct in not making any demand for the return of this money. The limitation of three years under Article 89 of the Limitation Act for institution of a suit was allowed to get expired on the 20th of February, 1949. It is true that a provision for extension of limitation was made by the Displaced Persons (Institution of Suits) Act No. 47 of 1948, but section 8 of that Act, which is reproduced earlier, merely gave a discretion to extend limitation where the plaintiff satisfied the Court that he was

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unable to institute the suit within time, owing to causes connected with his being a displaced person.

If a sum of Rs. 30,000 was in fact due to the petitioner from the respondents, he would have made demands for its return. If the payment had been made by the respondents to Messrs. R. B. Lachhman Das Mohan Lal and Sons without the petitioner's authority, he would have made strong protests and would normally have given a proper lawyer's notice to the respondents. He would also have demanded return of this amount from firm R. B. Lachhman Das Mohan Lal and Sons. He was not a stranger to that firm but has been and still is their partner in no less than three businesses. In the witness-box Prem Nath petitioner has not dared to offer any explanation whatsoever for this unbusiness-like conduct of his. I am not willing to believe that it was not within his knowledge that the sum of Rs. 30,000 had been paid by the respondents to firm R. B. Lachhman Das Mohan Lal and Sons. His continued silence for a large number of years and the presentation of this application under section 13 on a one-rupee stamp on the 9th of December, 1952, the last day of limitation, suggests that on payment of court-fee of one-rupee, he was hazarding a gamble to get Rs. 43,891-2-9. On no other rational basis, can the curious conduct of the petitioner be explained. He is absolutely silent as to the difficulties which prevented him from demanding the return of this huge amount from the respondents, and there is no attempt even by way of a suggestion, as to why no notice of demand of any kind was ever made by him before presenting his claim nearly seven years after the payment had become due. I agree with the conclusion of the Tribunal on this issue, and I hold that the petitioner has failed to prove that any amount was due to him from the

respondents. This being so, no question arises as to his being entitled to any interest.

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Rikhiram and another

Tek Chand, J.

I maintain the order of the Tribunal dismissing the petitioner's application under section 13 of the Displaced Persons (Debts Adjustment) Act, No 70 of 1951. In the result, the appeal fails and is dismissed. The respondents will be entitled to their costs throughout.

APPELLATE CIVIL.

Before Grover, J.

KAKU SINGH —*Petitioner.*

versus

GOBIND SINGH AND OTHERS —*Respondents.*

Execution First Appeal No. 179 of 1956 treated as Civil Revision No. 551 of 1957.

1957

Nov., 5th

Code of Civil Procedure (V of 1908)—Sections 144 and 151—Order of restitution not falling under section 144—Appeal from—Whether competent—Actual and symbolical possession—Effect of—Delivery of symbolical possession where actual possession should have been delivered—Effect of.

Held, that the order directing restitution of possession not on account of variation or reversal of decree or order but because a stay order had been made by the High Court, is not made under the provisions of section 144 of the Code of Civil Procedure but is made in exercise of the inherent powers under section 151. Such an order is not appealable but can be challenged by petition for revision.

Held also, that so far as the law of limitation is concerned, it is well settled that delivery of symbolical possession is deemed to be as effectual as delivery of actual possession especially when any dispute arises between the decree-holder and the judgment-debtor. But delivery of symoblical possession given in circumstances in which actual possession ought to have been given is a nullity as symbolical possession is not actual possession nor is it equivalent to